

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and

THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO : 24437 of 2004

Between:

C.Prasad, S/o. C.Ramachandriah,
Mahaboobnagar District, (Under orders of transfer to Mobile Border Patrolling Party,
Tandoor, Rangareddy District.

..... PETITIONER

AND

- 1 The Dy. Commissioner of Prohibition and Excise, Hyderabad Division,
Hyderabad.
- 2 The Commissioner of Prohibition and Excise, A.P., Hyderabad.
- 3 Prohibition and Excise Superintendent Mahaboobnagar District,
Mahaboobnagar.
- 4 The Dy. Commissioner of Prohibition and Excise, Mahabubnagar Division,
Mahabubnagar.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Issue a Writ, order or direction more in the nature of Mandamus declaring that the impugned Proc.Cr.No.A4/2728/04/DCH, dated 3-12-2004 issued by the Deputy Commissioner of Prohibition and Excise, Hyderabad Division and the Judgment of the Administrative Tribunal in O.A.No.6694 of 2004 dated 16-12-2004 as illegal, arbitrary discriminatory, unjust, void and violative of Articles 14, 16 and 21 of the Constitution besides being opposed to Government policy and hold that the petitioner is entitled to continue at Prohibition and Excise Inspector, S.H.O., Amangal., Mahabubnagar District with all consequential benefits.

Counsel for the Petitioner:MR.D.LINGA RAO

Counsel for the Respondent No.: GP FOR PROHIBITION & EXCISE / GP FOR SERVICES II

The Court made the following:

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ORDER:

(Per the Hon'ble Sri Justice J.Chelameswar)

The unsuccessful applicant in O.A.No.6694 of 2004 before the Andhra Pradesh Administrative Tribunal (for short 'the Tribunal') is the petitioner in this writ petition. The petitioner approached the Tribunal challenging the order of transfer dated 03-12-2004, by which he was transferred from Amangal of Mahboobnagar District and posted at Mobile Border Patrolling Party, Tandur, Ranga Reddy District.

As a matter of fact, the petitioner was posted as Prohibition & Excise Inspector at Amangal only three and half months prior to the date of the impugned order. In substance, the case of the petitioner was that the impugned transfer orders are vindictive in nature and intended only to harass him.

On such a plea, the Tribunal called for the original record pertaining to the impugned order, examined the same and recorded a finding that the record does not disclose any *mala fides* and in the absence of *mala fides*, the settled principle of law is that transfer is an incident of service and Courts are not required to interfere in the matters of transfer of the employees of the Government and was pleased to dismiss the O.A. and hence the writ petition.

This Court, while admitting the writ petition on 28-12-2004, was pleased to grant interim direction to continue the petitioner at Amangal pending further orders.

Having regard to the nature and background of the matter as indicated above, we thought it fit to dispose of the writ petition itself and both the learned counsel for the petitioner and the learned Government Pleader agreed for the same.

The learned counsel for the petitioner submitted that though, on the face of

the order, the impugned order does not disclose any reasons and purports to be a simple order of transfer made in the usual course of administration, the counter and the annexure to the counter disclose that the petitioner is sought to be transferred on a specific allegation, in which case the petitioner is required to be given a reasonable opportunity. The learned counsel further argued that the administrative orders cannot be supported by appending reasons subsequently by the orders of calling persons before a judicial body.

The learned counsel heavily relied upon a judgment of the Supreme Court reported in **MOHINDER SINGH v. CHIEF ELECTION COMM.** . He specifically pointed out para-8 of the said judgment in this regard.

There cannot be any quarrel with the proposition that administrative orders must be judged by the reasons so mentioned in the order but cannot be supplemented by fresh affidavits subsequently. In fact, the Supreme Court made this principle very categorical way back in 1952 in *Gordhandas Bhanji* (AIR 1952 SC 16 at para-18), which principle was reiterated by the Supreme Court in *Mohinder Singh's* case (1 supra) as follows:

“The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Gordhandas Bhanji* (AIR 1952 SC 16) (at p.18):

“Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself”.

Therefore, we are compelled to ignore the material annexed to the counter affidavit and also the various allegations in the counter affidavit based on the annexure. If that material is ignored, we are only left with a bare order of transfer, which does not indicate that any kind of stigma is attached to the order of transfer. In such case, the law is well settled that the Courts do not interfere with the orders of transfer bearing an allegation of *mala fides*.

Neither the writ affidavit nor the application filed before the Tribunal disclose any specific allegation of *mala fides* against one of the respondents bearing a vague statement that the transfer is only meant to harass the petitioner. However, the Tribunal examined the original record pertaining to the impugned order and recorded its satisfaction that the record does not disclose any *mala fides*.

In the circumstances, we do not find any reason warranting interference by this Court with the order of the Tribunal, which is under challenge before us.

The writ petition is therefore dismissed. No order as to costs.

J.CHELAMESWAR, J

M.VENKATESWARA REDDY, J

Dated June 10, 2005.

YCR

To

- 1 The Deputy Commissioner of Prohibition and Excise, Hyderabad Division, Hyderabad.
- 2 The Commissioner of Prohibition and Excise, A.P., Hyderabad.
- 3 The Superintendent, Prohibition and Excise, Mahaboobnagar District, Mahaboobnagar.
- 4 The Deputy Commissioner of Prohibition and Excise, Mahabubnagar Division, Mahabubnagar.
5. 2 CCs to G.P. for Prohibition and Excise, High Court Buildings, Hyderabad (OUT)
6. 2 C.D. copies.
7. The Registrar, A.P. Administrative Tribunal, Hyd.